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Via Electronic Filing

Chairman Kevin J. Martin  
Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert McDowell  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45**

Dear Chairman Martin and Commissioners:

This letter is in connection with Chairman Martin's news briefing Wednesday, October 15: a draft item that endeavors to override the legislative criteria for universal service eligibility. At the outset, we are constrained to note that the analysis set forth below is based only on second hand descriptions of the Chairman's briefing and third hand reports from others in the industry. To our knowledge, no draft rules are publicly available, nor are there other publicly available official summaries of the proposed action which industry can analyze in a transparent manner so as to advocate informed by effective notice of the actual draft rules between now and the scheduled hearing date of November 4.

MTPCS, LLC d/b/a Cellular One ("MTPCS") is a small carrier providing facilities-based wireless service to rural markets in Montana, Wyoming, Oklahoma and Texas. After two years of work to obtain ETC status in Montana, MTPCS was awarded such status by that state's Commission in April of this year. MTPCS continues to operate its rural networks, and is still looking forward to receiving its first payment of support, as it has commenced work on its five-year buildout plan as promised to the Montana PSC. MTPCS is the only CETC in most of its designated areas.

*The draft item under consideration by this Commission could result in vast abandonment of rural wireless customers, contrary to the statutory framework for designation and retention of eligibility, and provision of rural customers with services equivalent to those in urban areas. The proposals could leave designated areas lacking any CETC to compete with the incumbent wireline companies, resulting in increased prices and decreased availability of services for rural consumers. This result would be exactly contrary to the stated principles and goals of the universal service program.*

**Summary.** The primary concerns for MTPCS are:

- (1) Most small carriers, with one or two switches (serving just one or two states), are likely to encounter unreasonable difficulty implementing the 20% broadband requirement in year one.

Approximately seventy-five percent of the cost of meeting the five year broadband benchmark is a switch upgrade. Thus, in order to meet the broadband “yearly 20%” stages, a one-switch carrier would likely need to obtain from tight credit markets and invest approximately 75% of the total investment in year one. Given that the proposed distribution mechanism could result in wireless carriers drawing zero funds from the new mechanism, this requirement is a non-starter for us, and for rural consumers. We advise exempting small businesses, Tier II and III carriers, from the broadband buildout stages and having a requirement that must be met in year five, rather than annual benchmarks. In addition (as set forth below), a proper broadband funding mechanism must be implemented.

- (2) We believe most wireless carriers build more network with each dollar of support than wireline carriers. Accordingly, requiring wireless carriers to meet a wireline cost benchmark is likely to either motivate wireless carriers to inflate costs, or result in removal of support for service to existing rural wireless customers, resulting in higher prices, less coverage, and fewer service options. Moreover, the “filing on carriers’ own costs” calculus for wireless carriers sounds amazingly inaccurate, as it is based on neither our actual costs nor our subscriber numbers.

We believe wireless carriers, in order to compete effectively, have developed as very cost-efficient providers of telecommunications services. As such, requiring them to meet a wireline cost benchmark in order to retain ETC status is likely to result in a sweeping reduction in supported wireless operations and a large compliment of suddenly dissatisfied Americans whose prices have increased or whose service no longer covers their area. The USF is designed to support extension and operation of telecommunications services, including mobile services,<sup>1</sup> to just such areas. The current proposal incentivizes CETCs to *increase* their costs in order to retain eligibility. Ironically, this is the exact problem with the current cost-plus system for some incumbent wireline companies: it encourages increased cost reporting. The FCC, instead of encouraging lavish spending (and cutting cost-efficient providers off from rural buildout

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<sup>1</sup>

The Senate Committee Report for the 1996 Act noted, in connection with the need to protect and advance universal service, that Congress was opening up the local telephone market for competition by entities including “cable, wireless, long distance, and satellite companies, and electric utilities, as well as other entities.” S. Rept. 104-23, at 5 (emphasis supplied). The Report also stated that the definition of universal service should be periodically updated in order to “ensure that all Americans share in the benefits of new telecommunications technologies.” S. Rept. 104-23, at 27. The following paragraph mentioned that conduits could consist of “twisted pair wire, coaxial cable, fiber optic cable, wireless, or satellite system”. In other words, the Senate Committee expressly recognized and intended that universal service fund competition and new technologies, and Congress was fully aware of commercial mobile service providers, whose industry both Houses had specifically addressed in their 1993 Act addressing Section 332(c) of the Act and implementing spectrum auctions.

funding), should seek to reward the most efficient providers by letting them continue to expand coverage of supported services to customers. Moreover, we cannot “goldplate” our facilities to increase support, as many wireline carriers can. Many wireless carriers operate in competitive urban markets as well as rural markets, and if operations are inefficient, the carriers will fail. This “no fail” scenario for wireline companies must be re-examined.

We urge the Commission to instead analyze whether an AREA is high-cost to build, involving examination of whether any carrier (*regardless* of its technology) would have to incur more costs to serve this area than urban areas, which can be determined simply by determining if the area is very rural and therefore requires more equipment per subscriber to cover it than an urban build.

**Discussion.** Building infrastructure to serve skiers on vast, frozen mountains, hikers in the forests, ranchers and farmers and drivers on extensive rural roads consumes a great deal of capital. Therefore, carrying out a five-year buildout plan to achieve coverage of 98% of the population in each of our designated ETC service areas, as MTPCS is obliged to do in compliance with the ETC regulations of the Montana PSC, will require receipt of the universal service funds that were provided for, under federal law, during our application process and at the time of designation as an ETC. Failure to provide the expected universal service support could leave carriers stranded, owing hundreds of thousands of dollars for the construction expenses they have been incurring in good faith reliance on law, on a stringent application process and regulatory structure, and business plans made reasonably to meet rigorous buildout requirements. This failure also would leave stranded the rural residents who strongly desire to receive wireless telecommunications service: stranded without any equivalent mobile access to public safety or distance business development, telemedicine, distance learning, and more. We have buildout plans to serve numerous previously unserved areas.

The FCC draft would result in the decommissioning or significant modification of new multimillion dollar equipment, in order to match the agency’s desired broadband speeds. Even setting aside the conundrum of regulations that rush carriers so quickly to purchase new equipment that they are rewarded for wasting extensive investment (including, in some cases, existing switches purchased with USF support), many small carriers would have unreasonable difficulty obtaining from a manufacturer and implementing a broadband switch upgrade in a single year. Approximately 75% of the total investment may be required in order to deliver the first 20% of network upgrade. Therefore, more time is necessary for the first stage of planning and implementation as well as financing (receipt of funds does not occur upon designation). MTPCS urges the Commission to exempt Tier II and Tier III carriers from the broadband requirement, in light of the draft rule’s failure to provide sufficient time for obtaining and implementing the initial equipment.

We suggest that making available real incentives for broadband deployment, rather than a threat (removal of support for service to existing customers), would be more effective, likely to succeed, and compliant with the law Congress wrote. For example, offering meaningful and useable federal tax incentives for rural broadband (including deployment of wireless broadband), accompanied by a bulletin urging manufacturers to offer broadband technology to all Tiers of providers at comparable prices and delivery schedules, could be an expeditious way of accomplishing broadband deployment.

Many of the proposed reforms seem designed to wrest USF support away from the new competitors whose services the Act was designed to facilitate. Yet citizens increasingly crave wireless service. J.D. Powers & Associates recently found that 27% of American consumers now have only wireless phones.<sup>2</sup> Wireless is the form of telecommunications increasingly desired by citizens. MTPCS received a request from a citizens group in a Montana area in our buildout plan, the Swan Valley; these citizens told us they have gathered signatures from 2300 people on a petition requesting wireless service. We are reliant on support for provision of that service. Receipt of USF will make wireless service a reality in many rural areas – a much desired assurance of safety for those injured and financial security for those with outdoors-intensive businesses such as farming, tourism, real estate, construction, ranching, etc. It seems to us that continuing to realistically make available support for this useful technology, which connects citizens with assistance even when injured outside in a field or road, will continue the availability of technologically neutral, affordable array of service choices for Americans in rural areas, rather than only the phone nailed to a kitchen wall.

This brings us to the efficiency of providers. Under current law, we believe the reasonable analysis is not a benchmark aimed at determining whether a particular COMPANY is a high-spender (an attribute that is likely to be concentrated among technologies with equipment more costly than wireless equipment). In the interest of fairness to ILECs as well as CETCs, we believe the question should not be which industries are high-cost providers and which are low-cost, since rural consumers may reasonably deserve a choice among the various technologies that are available to urban consumers – but, rather, whether the area is going to be more expensive for any carrier to build than the urban construction expenses of the average carrier using that technology, because the area is rural. This involves some analysis of population distribution and, perhaps, terrain.

One asserted goal at the moment is to “preserve” USF.<sup>3</sup> The optimum way to get the “most bang for the buck” (if one accepts the sky-is-falling Fund-imploding scenario that, some incumbent commenters

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<sup>2</sup> See <http://www.wirelessweek.com/1-in-4-US-Subs-No-Landline.aspx>

<sup>3</sup> The Fund will not spontaneously combust if it reverses its current decline in growth; customer contributions have barely budged, and the rate of increase in support to CETCs has recently decreased even pre-cap, reflecting the fact that most CETCs who the 1996 Act enabled to seek funds, have now done so. The majority of payments from the Fund still go to support incumbent operations; some carriers’ anticompetitive attacks on CETCs are a diversion from the major uses of funding.

As a side note: we still do not see wireless consumers, who fund approximately 40% of the USF, complaining that some emergency has arisen, requiring that wireless carriers be unceremoniously dumped off the level playing field provided by identical support. We have not seen any legal or true financial reason why the Fund cannot continue as at present, supporting all eligible providers to the benefit of customers who desire new or advanced services, rather than only the least cost-efficient providers. Commenters’ attacks on funding to CETCs are amazing and certainly not technologically neutral. Wireless carriers strive for great cost efficiencies, and receive only a minority of high-cost funding. Limiting the minimal support that they receive will not effect meaningful cost savings for the Fund, as the Rural Cellular Association (RCA) has proven in its filings noting official government data. If the Fund provides identical support to all providers, all companies will remain on a level playing field for marketplace competition, permitted to start from the same place, rather than providing more funds to

dramatically claim, requires the government to pick winners and losers) is to support the most efficient operations, the carriers that tend to build the most network for the dollar, rather than penalizing those whose costs are “not high enough” to meet another industry’s benchmark (wireline benchmark costs) – penalizing the cost-effective providers and their customers by taking away their ETC status. In other words, if Congress changes the law to permit the Fund to support only certain technologies, then the agency might conduct a rulemaking and logically decide to fund the efficient, cost-effective builders of rural telecommunications capability, rather than cutting off their funding if their costs are not high enough.

Currently, all support received must be plowed right back into network buildout and operations in compliance with law. Because CETCs must seek funding before a build and are not compensated until months later, there is considerable incentive to be cost-efficient so as to keep a company’s debt ratio reasonable. And CETCs currently are *not* subject to cost-plus disincentives and therefore have kept costs low, which means USF contributors are getting good “bang for their buck.”

Without support, rural wireless coverage could diminish dramatically (to the competitive benefit of wireline incumbents but not the customers who lose the diverse array of services intended to result from the Act’s universal service provisions), and the quality of service that would be provided by a rock-bottom-price provider as a result of auctions would not be high. This will result in millions of discontented customers and the exact reversal of legislative intent.

The incentives in the draft proposal are, therefore, at odds with a desire to reduce the size of the Fund – a goal that apparently is motivating these changes. MTPCS urges the Commission to exempt small carriers from the requirements of meeting the “same benchmark standards” as wireline carriers in order to retain their ETC designations. Why should carriers be presented with incentives to incur extra costs? Reason suggests that wireless carriers’ costs should be determined as worthy of funding if they are higher than an average *wireless* carrier’s costs to serve an urban area. Basing support on wireline costs is likely to lead to CETCs purchasing unnecessarily costly equipment, a problem that to date has not been characteristic of wireless networks.

Finally, we hear that wireless carriers would be urged to file “on our own costs,” yet those costs would be determined by taking our own efficient costs – but, in an amazingly unfair proposal which we hope will not be adopted, would not include our enormous initial cost, the investment of hundreds of thousands or millions of dollars required to obtain licenses for spectrum – and then dividing those thus-lacking costs by the *incumbents’* enormous customer bases, to come up with a “cost per line” that will be, of course, wildly inaccurate and completely unrelated to actual costs.

We urge the Commissioners and their wise advisors to take well considered action to avert this hare-brained result by injecting reason into the process and rejecting the proposed draft while that option is still available to you.

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only the least cost-efficient company, which gives it a boost up that is not only unfair and not economically sensible but also not technologically neutral.

**In conclusion.** We recommend addressing incentives by either exempting small carriers from the cost requirements or simply examining whether the markets being served are rural in terms of population per area, rather than requiring carriers to have outrageously high expenditures as somehow proving that the market is rural. We urge the Commission to continue providing USF to wireless carriers under the existing, statutory regime, or to offer exemptions for Tier II/Tier III carriers, so as to support rural residents in their quest to continue providing rural customers with mobile voice and data services at reasonable prices. We urge the Commission to vigorously revise the proposed combination of attacks on high-cost funding for independent CETCs. Mobility is, as college students, rural teachers, business people, and emergency personnel will tell you, the telecommunications technology of the future. We urge this Commission to not abandon independent mobile carriers who serve citizens of the vast rural prairies and mountains that make America great.

Respectfully submitted,

Jonathan D. Foxman  
President / CEO



Cc: Marlene Dortch, Secretary